



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 17, 2023

IN THE MATTER OF:

Appeal Board No. 626105

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant refused an offer of suitable employment without good cause.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed September 30, 2022 (A.L.J. Case No.), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. The attachments to the employer's objection letter, marked as Hearing Exhibit 1, indicate that the employer has provided, prior

to the hearing, sufficient detail in response to the request for information by the Department of Labor. We, therefore, find that there is good cause to expand the basis regarding the issue of refusal such that testimony and evidence should be taken regarding the issue of refusal of suitable employment without good cause. In this regard, the Judge should confront the parties with Hearing Exhibit 1, including pages numbered 4 through 7, as the claimant

indicated at the hearing that she did not have the packet of documents for the hearing. The parties should also be confronted with the letter from the employer dated August 10, 2022 and the pages which appear to have been attached, pages 10 through 14 of the September 28, 2022 hearing packet, regarding the details of the contended job offers and refusals by the claimant. Pages 10 through 14 should be accepted into the record in the usual manner.

The employer should be questioned regarding the details of assignments shown in these documents, how the claimant would accept assignments through the application, and whether the claimant had previously used the application to accept assignments. The employer should also be asked if there were other ways that the employer communicated the availability of these assignments to the claimant, other than through the application. The claimant should be questioned regarding her use of the application, including how she used it, the date range through which the claimant used the application to obtain assignments, whether she stopped using the application, if so, when she stopped using it and whether she notified the employer that she was not using it any longer. The Judge shall take any further relevant testimony and evidence as appropriate.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER